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CONFIRMATION NO. ATTORNEY DOCKET NO. APPLICATION NO. FILING DATE FIRST NAMED INVENTOR 2002P14188US01;60,427-61 7038 08/20/2003 Kevin A. Murphy 10/644,440 EXAMINER 24500 7590 07/21/2004 MCMAHON, MARGUERITE J SIEMENS CORPORATION PAPER NUMBER ART UNIT

INTELLECTUAL PROPERTY LAW DEPARTMENT 170 WOOD AVENUE SOUTH ISELIN, NJ 08830

3747 DATE MAILED: 07/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary    Disposition   Art Unit   Art U		Application No.	Applicant(s)	
Asylor	Office Action Con	10/644,440	MURPHY, KEVIN A.	
The MAILING DATE of this communication appears on the cover sheet with the correspondence address.  Period for Reply  A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ② MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.  Edecines of them may be visible address by existing of \$1 CFR 1.138(a). In no evord, however, may a reply be limited to the many by the considered timely.  If the period for reply specified above is less bits, bittly (30) days, a reply within the statutory minimum of their (30) days will be considered timely.  If the period for reply specified above, he maximum studing period will gaine \$20 (in MONTH) for the meding date of this communication of the period for reply specified above, he maximum studing period will gaine \$20 (in MONTH) for the meding date of this communication of the period	Oπice Action Summary	Examiner	Art Unit	
Period for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.  She for this communication is the state of this communication.  For this St (8) MONTH from the nation and the state of this communication.  It he period for reply she does be less than this (20) days, a reply the timely filled and the St (8) MONTHS from the nation date of this communication.  It he period for reply she does be less than the state (20) days, and will accine SD (6) MONTHS from the national date of this communication.  It has protected by the Office that the the mathem matter the mailing date of this communication. The replacement from adjustment. See 37 CFR 1.704(b).  Status  1) Responsive to communication(s) filled on		5		
THE MAILING DATE OF THIS COMMUNICATION.  - Extractions of time may be available under the personner of 37 CPR 1.136(a). In no event, however, may a reply be timely filed with SV (i) MoNITA' from the mailing date of the communication.  - Self to prefer the provided of the communication.  - If No period for reply is specified betwe, the maximus statutery period by within the statistics provided by within the self or exploration and the self or extended above, the maximus statutery period largely and will exist SV (i) MoNITA' from the making date of this communication.  - Failure to reply within the set or extended principle for reply vall, by statute, cause the application to become ABANDONED (38 LS.C.§ 133).  Any reply received by this Office and the self of the communication, even if £mely filed, may reduce any statuted patent form edipartment. See 37 CPR 1.761(b).  - Status  1)	The MAILING DATE of this communication appears on the cover sheet with the correspondence address Period for Reply			
1) Responsive to communication(s) filed on	THE MAILING DATE OF THIS COMMUNICATION.  - Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any			
2a  This action is FINAL.   2b  This action is non-final.   3  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.	Status			
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#### **DETAILED ACTION**

## Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-4, 7-10, 13, 15, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nakayama et al (5, 575,247). Nakayama et al show everything except a throttle hose portion. It would have been prima facie obvious to substitute a throttle body for a combination throttle body and hose, since the throttle body of Nakayama et al serves the function of connecting the throttle valve to both the air filter and the intake manifold in exactly the same way that the combination throttle body and hose of the instant invention does, and the combination provides no advantages over the throttle body alone. Note also that "an express suggestion to substitute one equivalent for another is not necessary to render such substitution obvious." See MPEP 2144.06.

# Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

<sup>(</sup>b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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Claims 14, 16, 18, and 19 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Nakayama et al (5,575,247) or Kargilis (6,273,048).

## Allowable Subject Matter

Claims 5, 6, 11, 12, and 17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marguerite J. McMahon whose telephone number is 703-308-1956. The examiner can normally be reached on flex.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yuen Henry can be reached on 703-308-1946. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MARGUERITE MCMAHON PRIMARY EXAMINER

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